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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of
6 the Securities Act of Washington by:

6 ALPHA CAPITAL GROUP, LLC
7 ANNE DILEO
8 LYNN GORDON
9 VIATICAL ESCROW SERVICES
10 JAMES CAPWILL
11 LINDA Y. DEMIERO-STULL
12 ROBERT W. STULL
13 JOSEPH C. VOUTOUR
14 JAMES MICHAEL METCALF
15 DONALD E. JOHNSON
16 ALAN GOODE
17 MICHAEL BARRY RUSSELL

18 Respondents.

SDO - 43 - 99

SUMMARY ORDER TO CEASE AND DESIST

Case No. 99-03-062

14 THE STATE OF WASHINGTON TO: Alpha Capital Group, LLC; Anne DiLeo; Lynn Gordon; Viatical
15 Escrow Services; James Capwill; Linda Demiero-Stull; Robert Stull;
16 Joseph C. Voutour; James M. Metcalf; Donald E. Johnson; Alan
17 Goode; Michael Barry Russell

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STATEMENT OF CHARGES

18 Please take notice that the Securities Administrator of the state of Washington has reason to believe that Alpha
19 Capital Group, LLC, Anne DiLeo, Lynn Gordon, Viatical Escrow Services, James Capwill, Linda Y. Demiero-Stull,
20 Robert W. Stull, Joseph C. Voutour, James M. Metcalf, Donald E. Johnson, Alan Goode, and Michael Barry Russell
21 (hereinafter referred to as "Respondents"), have violated the Securities Act of Washington and that their violations
22 justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such
23 violations. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such

25 SUMMARY ORDER TO CEASE AND
26 DESIST

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25 DEPARTMENT OF FINANCIAL INSTITUTIONS
26 Securities Division
27 PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should
2 be entered immediately. The Securities Administrator finds as follows:

3 **TENTATIVE FINDINGS OF FACT**

4 **I. RESPONDENTS**

5 1. **ALPHA CAPITAL GROUP, LLC (“ACG”)** is a viatical settlement company with its principal
6 place of business located at 104 East 40th Street, New York, New York 10016. **ANNE DILEO (“DiLeo”)** is the
7 president of ACG. **LYNN GORDON (“Gordon”)** is an employee of ACG who provides promotional and
8 marketing materials regarding ACG to sales agents.

9 2. **VIATICAL ESCROW SERVICES (“VES”)** provides escrow services to ACG and participates in
10 the sale of viatical settlements to individual investors. Its principal place of business is located at 9140 Ravenna
11 Road, Suite 2, Twinsburg, Ohio 44087. **JAMES CAPWILL (“Capwill”)** is the president of VES.

12 3. **LINDA DEMIERO-STULL (“Demiero-Stull”)** sells viatical settlements on behalf of ACG. Demiero-
13 Stull is an insurance agent in the state of Washington, and she receives mail at 2422 H Street, Bellingham,
14 Washington 98225. Demiero-Stull has offered and sold viatical settlements on behalf of ACG to at least 10
15 Washington residents, and received 15 percent of the investors’ funds as sales commissions. Demiero-Stull has
16 received at least \$65,000 in total sales commissions.

17 4. **ROBERT STULL (“Stull”)** sells viatical settlements on behalf of ACG. Stull receives mail at 2422
18 H Street, Bellingham, Washington 98225. Stull has offered and sold viatical settlements on behalf of ACG to at least
19 two Washington residents, and received sales commissions as a result of the sales.

20 5. **JOSEPH C. VOUTOUR (“Voutour”)** sells viatical settlements on behalf of ACG. Voutour is an
21 insurance agent in the state of Washington, and he receives mail at 14905 346th Avenue NE, Duvall, Washington
22 98019. Voutour offered and sold to at least one Washington resident and received 15 percent of the investor’s funds
23 as sales commission.

1 6. JAMES MICHAEL METCALF (“Metcalf”) sells viatical settlements on behalf of ACG. Metcalf
2 receives mail at 1255 Post Street, Suite 911, San Francisco, California 94109. Metcalf offered and sold viatical
3 settlements on behalf of ACG to at least one Washington resident, and received 15 percent of the investor’s funds as
4 sales commission.

5 7. DONALD E. JOHNSON (“Johnson”) sells viatical settlements on behalf of ACG. Johnson receives
6 mail at PO Box 66851, St. Pete Beach, Florida 33736. Johnson offered and sold viatical settlements to at least two
7 Washington residents, and received 15 percent of the investors’ funds as sales commissions.

8 8. ALAN GOODE (“Goode”) sells viatical settlements on behalf of ACG. Goode receives mail at 1371
9 Willey’s Lake Road, Ferndale, Washington 98248. Goode offered and sold viatical settlements on behalf of ACG to
10 at least one Washington resident, and received 15 percent of the investor’s funds as sales commission.

11 9. MICHAEL BARRY RUSSELL (“Russell”) sells and promotes viatical settlements on behalf of
12 ACG. Russell receives mail at 10344 NE 12th St., Apt. H-304, Bellevue, WA 98004. Russell offered viatical
13 settlements on behalf of ACG to at least two Washington residents. Russell also provided ACG’s promotional and
14 marketing materials to potential sales agents. Russell received a two-percent sales commission from Voutour’s sale
15 of a viatical settlement.

16 II. NATURE OF OFFERING

17 10. From at least July 1998 to March 1999, Respondents acting in concert, on behalf of one another,
18 and/or acting through their sales agents, offered at least 18 Washington residents the opportunity to purchase an
19 irrevocable beneficiary ownership interest in a contestable life insurance policy (or set of policies) in which the
20 insured is terminally ill (i.e., viatical settlements). The offerees are told that their investment would produce a 100-
21 percent rate of return because they would be collaterally assigned a life insurance policy (or set of policies) with face
22 values totaling twice their investment. And when the insured becomes deceased the investor will be able to collect
23 death benefits two times the amount of his or her investment.

24 11. The offerees are led to believe that they would be designated as the sole irrevocable beneficiary of a

25 SUMMARY ORDER TO CEASE AND
26 DESIST

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1 life insurance policy, as opposed to having a fractionalized ownership interest. Moreover, the offerees are told that
2 once they are designated as the irrevocable beneficiary of a contestable policy, they would have the option of reselling
3 their policy once it becomes incontestable (two years after the date the policy is issued) for 70 percent of the policy's
4 face value.

5 12. The offerees are told that if the contestable policy in which they have been designated as the
6 irrevocable beneficiary is contested or cancelled by the insurer, ACG would provide a replacement policy that is
7 matched for face amount, life expectancy, and time to non-contestability from a segregated Replacement Policy Trust
8 managed by Viatical Escrow Services.

9 13. Some of the offerees were provided promotional materials that described viatical investments as
10 being better investments than stocks, mutual funds, annuities, and certificates of deposit that are issued by commercial
11 banks and credit unions, because viatical investments purchased through ACG provide:

12 “100% fixed rate of return *fully secured*. Tax advantaged & hassle free!”

13 “*Zero risk to principal, a totally safe investment with no load & no fees!*”

14 “*Full liquidity at maturity from rock solid ‘A’ rated insurance companies!*”

15 “*Short holding periods, and with early buyout options available as well!*”

16 “*No speculation, no interest rate risk, no market risk, no economic risk!*”

17 14. The offerees are led to believe that they would be making a “humanitarian investment” because the
18 terminally ill viator would be able to utilize the investor’s funds to take positive action such as: receive improved
19 health care services; pay off debts; take expensive vacation trips. Moreover, the offerees are led to believe that
20 viaticating a policy allows the terminally ill viator to have financial stability, reduced family stress, and would
21 otherwise enhance the viator’s quality of life.

22 15. At least 18 Washington residents invested a total of at least \$790,000 in viatical settlements through
23 ACG. Subsequently, 14 of the Washington investors were collaterally assigned beneficiary ownership interests in
24 whole and/or fractionalized life insurance policies. Four Washington residents have invested funds but to date have

1 not been collaterally assigned beneficiary ownership interests in any life insurance policy. The investors who have
2 been collaterally assigned ownership interests in policies received a “mortality profile” or “life expectancy certificate”
3 created by an independent physician which certifies that the insured is terminally ill and estimates the insured’s life
4 expectancy – generally not more than 60 months.

5
6 **III. MISREPRESENTATIONS AND OMISSIONS**

7 In connection with the offer and sale of viatical settlements as described above, Respondents made the
8 following misrepresentations and omissions:

9 16. The Washington investors are told that they would be purchasing an irrevocable beneficiary
10 ownership interest in a life insurance policy (or set of policies) in which the insured is terminally ill. However,
11 Respondents failed to disclose to investors that the insured was terminally ill prior to being insured, and that the life
12 insurance policy was issued because the insured made a misrepresentation as to his or her health condition by
13 concealing the fact that he or she is terminally ill. In effect, Respondents failed to disclose that the investors would be
14 purchasing ownership interests in life insurance policies that were fraudulently obtained, and thus subject to rescission
15 or cancellation by the insurer.

16 17. The Washington investors are led to believe that they would be designated as the sole irrevocable
17 beneficiary of a life insurance policy (or set of policies), as opposed to having a fractionalized ownership interest.
18 However, at least seven Washington investors were collaterally assigned fractionalized ownership interests in life
19 insurance policies.

20 18. Respondents failed to disclose to investors the length of time it would take to assign beneficiary
21 ownership interests in a life insurance policy (or set of policies). At least four Washington residents have made
22 investments as early as October 1998. To date, they have not been assigned beneficiary ownership interests in any
23 life insurance policy.

1 19. The Washington investors were told that once they were designated as the irrevocable beneficiary of a
2 contestable policy, they would have the option of reselling their policy once it became incontestable (two years after
3 the date the policy is issued) for 70 percent of the policy's face value. However, Respondents failed to disclose to
4 certain investors that the ownership interests in their policy would be resold to a third party, and not ACG.
5 Respondents also failed to disclose that the option to resell the ownership interests in the policy is not a guaranteed
6 option, but rather, ACG would only make an effort to facilitate a resale of the ownership interests in the policy. In
7 addition, Respondents failed to disclose that if an investor's ownership interests were resold the investor would not
8 necessarily receive 70 percent of the policy's face value. In fact, it would depend on the amount the third party would
9 be willing to purchase the ownership interests from the investor, which could be significantly less than 70 percent of
10 the policy's face value.

11 20. The Washington investors are led to believe that they would be making a "humanitarian investment"
12 because the terminally ill viator would be able to utilize the investor's funds to take positive action such as: receive
13 improved health care services; pay off debts; take expensive vacation trips; and would otherwise enhance the viator's
14 quality of life. However, Respondents failed to disclose to investors that the viator (the policyowner who is
15 viaticating a policy) is not necessarily the terminally ill insured. In some cases, the viator is a creditor who has an
16 insurable interest in the life of the terminally ill insured. Thus, the terminally ill insured will not necessarily directly
17 benefit from the investor's viatical investment. Moreover, Respondents failed to disclose that even if the terminally
18 ill insured is the viator, the viator will not receive all or most of the investor's investment. In fact, after deducting the
19 fees paid to sales agents, viator agents, ACG, and VES from the investor's funds, the viator will be left with very little
20 of the investor's investment. For example, one Washington investor invested \$45,000 and subsequently was
21 collaterally assigned the sole ownership interest in a life insurance policy with a \$90,000 face value. In this case, the
22 terminally ill insured was the viator, but the viator received only \$5,400, which is only 12 percent of the investor's
23 investment or six percent of the policy's face value.

CONCLUSIONS OF LAW

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

I.

The offer and/or sale of viatical settlements described above constitutes the offer and/or sale of a security as defined in RCW 21.20.005(10) and (12), to wit: an investment contract; or risk capital.

II.

The offer and/or sale of said securities is in violation of RCW 21.20.140 because no registration or notification of claim of exemption for such offer and/or sale is on file with the Securities Administrator of the state of Washington and it appears that the ACG does not otherwise qualify for an exemption from registration.

III.

Respondents have violated RCW 21.20.040 by offering and/or selling said securities while not registered as a securities salesperson, broker-dealer, or investment adviser in the state of Washington.

IV.

The offer and/or sale of said securities was made in violation of RCW 21.20.010 because as set forth in section III of the Tentative Findings of Fact, Respondents made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

V.

The Securities Administrator finds that an emergency exists and that the continued violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140 constitute a threat to the investing public. Accordingly, a Summary Order to Cease and Desist from those violations is in the public interest and necessary for the protection of the investing public.

SUMMARY

Based on the foregoing, NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that Respondents, Alpha Capital Group, LLC, Anne DiLeo, Lynn Gordon, Viatical Escrow Services, James Capwill, Linda Y. Demiero-Stull, Robert W. Stull, Joseph C. Voutour, James M. Metcalf, Donald E. Johnson, Alan Goode, Michael Barry Russell, and their agents, employees, and representatives, each cease and desist from offering and/or selling securities in any manner in violation of RCW 21.20.140, the section of the Securities Act of Washington requiring registration for the offering and/or selling of securities.

It is further SUMMARILY ORDERED that Respondents, Alpha Capital Group, LLC, Anne DiLeo, Lynn Gordon, Viatical Escrow Services, James Capwill, Linda Y. Demiero-Stull, Robert W. Stull, Joseph C. Voutour, James M. Metcalf, Donald E. Johnson, Alan Goode, and Michael Barry Russell, and their agents, employees, and representatives, each cease and desist from violating RCW 21.20.040, the section of the Securities Act of Washington requiring registration for securities salespersons and broker-dealers.

It is further SUMMARILY ORDERED that Respondents, Alpha Capital Group, LLC, Anne DiLeo, Lynn Gordon, Viatical Escrow Services, James Capwill, Linda Y. Demiero-Stull, Robert W. Stull, Joseph C. Voutour, James M. Metcalf, Donald E. Johnson, Alan Goode, and Michael Barry Russell, and their agents, employees, and representatives, each cease and desist from violating RCW 21.20.010, the antifraud section of the Securities Act.

AUTHORITY AND PROCEDURE

This Order is entered pursuant to the provisions of RCW 21.20.390, and is subject to the provisions of Chapter 34.05 RCW. Each of the Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order.

If a Respondent does not request a hearing, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and make the Summary Order to Cease and Desist permanent as to that Respondent.

1 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

2 DATED this ____ day of June, 1999.

5 _____
6 DEBORAH R. BORTNER
7 Securities Administrator

8 Approved by:

8 Presented by:

9 _____
10 Michael E. Stevenson
11 Chief of Compliance

9 _____
10 Paul S. Ocampo
11 Staff Attorney